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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/564,508 | 05/11/2006 | Jens Storkel | 02894-741US1 06765 | 9353 |
| 26161 7590 08/14/2009 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022 | | | | |
| EXAMINER | | | | |
| SPSICH, MARK | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 3727 | | | | |
| NOTIFICATION DATE | | DELIVERY MODE | | |
| 08/14/2009 | | ELECTRONIC | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary

Application No.

10/564,508

Applicant(s)

STORKEL ET AL.

Examiner

Mark Spisich

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 19-33 and 36-39 is/are rejected.
- 7) ☒ Claim(s) 34 and 35 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date 1/11/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the round brush head configured to oscillating rotational movement (claims 31-36) **must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.**

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. Claims 23-30 and 36-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 19 also recites a single depression, so the recitation of plural depressions (claims 23+ as well as claims 36 and 37) lacks antecedent and is therefore indefinite. "Longitudinal axis" (claim 38, line 8) lacks antecedent.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 19,20 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Weihrauch (USP 4,988,146). See Figures 4.2 and 4.3, which shows a depression (19) disposed in a brushing surface of the head (5) and in which at least one cluster (1) is located.

6. Claims 19-21 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen et al (USP 5,687,446). The patent to Chen discloses a brush head (14) as well as a plurality of bristle clusters (16) each inserted into a surface of the head and further includes a depression (22 as well as other shapes) associated with individual clusters.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/98344 in view of Chen et al (USP 5,687,446). '344 discloses a toothbrush comprising a head (1) with a slot (8) dividing the head into to halves (2,3) and further including a plurality of bristle clusters (5-7). '344 discloses the invention substantially as claimed with the exception of the depression. The patent to Chen discloses depressions (22) associated with bristle clusters (16). It would have been obvious to one of ordinary skill to have modified the device of '344 as such for the reasons set forth in Chen.

9. Claims 19-24 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fassler et al (USP 4,635,313) in view of Chen et al (USP 5,687,446). The patent to Fassler teaches the first step of claim 39, wherein the bristle clusters (10) are molded over with a plastic material to form a plastic mass or head (figure 1D). Fassler fails only to disclose the depression. The forming of a depression (22) in a head (14) of a brush is taught by Chen and that one of ordinary skill would deem it obvious to provide one to the brush of '313. As for claim 19, the patent to Fassler discloses clusters which are oriented transversely relative to the longitudinal axis of the brush. With the same logic

mentioned above with regard to claim 39, the provision of depressions to the head of Fassler would be obvious to one of ordinary skill.

10. Claims 19-21,31-33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlucci et al (USP 6,735,804) in view of Chen et al (USP 5,687,446). The patent to Carlucci discloses a round brush head (20) having a plurality of bristle clusters (40) a number of which have a generally rectangular cross-section. With regard to the depression(s), the provision of such depressions as taught by Chen would be obvious to one of ordinary skill.

Allowable Subject Matter

11. Claims 25-30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Claims 34 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. **Note:** These claims require a new drawing figure which does not introduce any new matter and any indication of allowability of these claims would be contingent on the approval of such figure(s).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Spisich/
Primary Examiner, Art Unit 3727

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